

No. 11691 2480

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN O'SULLIVAN,

Appellant,

vs.

TIGHE E. WOODS, Acting Housing Expediter,
Office of Housing Expediter.

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

SEP 1947

PAUL F. BARNES, JR.

No. 11691

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN O'SULLIVAN,

Appellant,


VS.

PHILIP B. FLEMING, Administrator, Office of
Temporary Controls,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, California,

Attorneys for Defendant and Appellant.

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San Francisco, California,

Attorney for Plaintiff and Appellee.

Before: The Honorable Leon R. Yankwich,
sitting without a jury.

In the District Court of the United States for
the Northern District of California, Southern
Division

No. 26257 R

PAUL A. PORTER, Administrator, Office of Price
Administration,

Plaintiff,

vs.

JOHN O'SULLIVAN, 1235 Filbert Street, San
Francisco, California,

Defendant.

COMPLAINT FOR INJUNCTION AND
TREBLE DAMAGES

Rent Regulation for Housing

Count I.

1. In the judgment of the Administrator the defendant engaged in actions and practices which constitute a violation of Section 4(a) of the Emergency Price Control Act of 1942, as amended, (hereinafter called the Act) which actions and practices consist of violations of the Rent Regulation for Housing (8 F. R. 14663) issued in accordance with the provisions of Section 2(b) of the Act; and, therefore, the Administrator brings this action pursuant to Section 205(a) of the Act to enforce compliance with said Section 4(a). Jurisdiction of this action is conferred upon the court by Section 205(c) of the Act.

Overcharges

2. The Rent Regulation for Housing, establishing maximum rents for the use and occupancy of housing accommodations, has been in effect in the San Francisco Bay Defense Rental Area at all times herein mentioned. Defendant, is landlord of certain accommodations subject to said Regulation, within said Area, including the housing accommodations at 2510 Central Avenue, Alameda, Calif.

3. Since July 1, 1942, defendant demanded and received rents higher than the maximum rents permitted by said Rent Regulation for the use and occupancy of such accommodations. More than thirty days have elapsed since the occurrence of the aforesaid overcharges and the tenants so overcharged have not instituted any action for damages on account of such overcharges, pursuant to Section 205(e) of the Act.

Wherefore, the Administrator demands:

1. A Preliminary and Final Injunction enjoining the defendant, his agents, employees and all persons in active concert or participation with them, from directly or indirectly:

(a) Demanding or receiving rents in excess of the maximum rents permitted by the Rent Regulation for Housing, as heretofore or hereafter amended, or in excess of the maximum rents permitted by any other Regulation or order heretofore or hereafter adopted pursuant to the Emergency Price Control Act of 1942,

as heretofore or hereafter amended or extended; or from otherwise violating said Regulation as heretofore or hereafter amended, or any other regulation relating to rents heretofore or hereafter adopted pursuant to said Act as heretofore or hereafter amended or extended.

(b) Removing or attempting to remove or threatening to remove any tenant from any housing accommodations, contrary to the provisions of said Rent Regulation for Housing.

2. A Preliminary and Final Injunction requiring the defendant to:

(a) File with the Administrator, Registration Statements in the form prescribed by the Administrator, correctly setting forth the maximum rent heretofore or hereafter established for defendant's housing accommodations rented or offered for rent.

(b) Exhibit to new tenants to whom defendant's housing accommodations are rented, the landlord's copy of the Registration Statement for such housing accommodations, and to secure the signature thereon of each new tenant, and to file with the Administrator within five days notice of such change in tenancy.

(c) Give to each new tenants of defendant's housing accommodations full and complete receipts for any sums received as rent for defendant's housing accommodations.

(d) Restore and maintain continuously all services, furniture, furnishings and equipment

required to be furnished to each tenant of defendant's housing accommodations in accordance with the provisions of the Rent Regulation for Housing, as heretofore or hereafter amended.

3. Judgment in favor of the Administrator on behalf of the United States of America and against the defendant for 3 times the amount of each overcharge or \$50.00, whichever is greater, as to each tenant so overcharged, and for costs.

Dated Aug. 6, 1946.

W. H. BRUNNER

PAUL FRIEDMAN

PHILIP ADAMS

F. E. FUHRMAN

C. M. SAROYAN

By /s/ F. E. FUHRMAN

Attorneys for Plaintiff

[Endorsed]: Filed Aug. 6, 1946.

[Title of District Court and Cause.]

ANSWER OF DEFENDANT

Comes now defendant John O'Sullivan and answering the complaint on file herein, admits, denies and alleges as follows:

I.

Answering the allegations of Paragraph 2 of Count I, this defendant denies that he is the land-

lord of accommodations located at 2510 Central Avenue, Alameda, California, and in this respect alleges that he has not been the landlord of said premises or owner thereof since March 1945.

II.

Answering the allegations of Paragraph 3 of Count I, this defendant denies each and every, all and singular the allegations therein contained, save and except that defendant admits that no tenants have instituted any action against him pursuant to Section 205(e) of the Act or otherwise.

As and for a Further, Separate and Distinct Affirmative Defense to Plaintiff's Complaint, Defendant Alleges as Follows:

That said action is barred by the provisions of Section 205(e) of the provisions of the Emergency Price Control Act of 1942 as amended.

Wherefore, defendant prays that plaintiff take nothing by his complaint on file herein and that he have judgment in his favor.

CHARLES A. CHRISTIN
THOMAS J. KEEGAN

State of California,
City and County of San Francisco—ss.

John O'Sullivan, being duly sworn, deposes and says:

That he is the defendant named in the above

entitled action; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated upon information and belief and as to those matters he believes it to be true.

JOHN O'SULLIVAN

[Seal]

(Verification of Notary)

[Affidavit of service by mail attached.]

[Endorsed]: Filed Oct. 8, 1946.

[Title of District Court and Cause.]

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 24th day of February, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Michael J. Roche,
District Judge.

ORDER GRANTING MOTION FOR
SUBSTITUTION OF PLAINTIFF

This case came on regularly this day for hearing of motion for substitution of plaintiff. After argument, it is Ordered that said motion be granted.

[Title of District Court and Cause.]

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 3rd day of March, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Leon R. Yankwich,
District Judge.

TRIAL, JUDGMENT, ORDER DENYING MOTION TO DISMISS COMPLAINT, ORDER DENYING MOTION FOR JUDGMENT IN FAVOR OF DEFENDANT, ORDER DENYING APPLICATION FOR INJUNCTION

This case came on regularly this day for trial before the Court sitting without a jury. F. Fuhrman, Esq. was present on behalf of the plaintiff, and Charles Christin, Esq. was present on behalf of the defendant. Mr. Christin made a motion to dismiss the complaint. Ordered that said motion be denied. Ralph G. Spencer and Ruth Kalen were sworn and testified on behalf of the plaintiff. Mr. Fuhrman introduced in evidence and filed Plaintiff's Exhibits Nos. 1, 2, and 3, and the plaintiff rested. Both sides rested. Mr. Christin made a motion for judgment in favor of the defendant. After hearing the arguments of the attorneys, it is Ordered that said motion be denied. The case was submitted to the Court for decision, and due consideration having

been had, it is Ordered that a judgment be entered in favor of the plaintiff in the sum of \$450.00, \$150.00 of said sum to be paid to the tenant Ruth Kalen. Further Ordered that the application for an injunction be denied. Further Ordered that findings of fact and conclusions of law be prepared in accordance with the rule.

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now the defendant above named, John O'Sullivan, and moves for a dismissal of the above proceedings on the following grounds:

I.

That Paul A. Porter, Administrator of the Office of Price Administration, is no longer the Administrator of the Office of Price Administration, and that the plaintiff in the above entitled matter is seeking to continue the proceedings herein under the name of a substituted plaintiff, to wit, Philip B. Fleming, and no proper showing has been made under Rule 25 of the Federal Rules of Civil Procedure nor has compliance been made with Section 780, Title 28, U. S. C. A.

II.

That Philip B. Fleming is not a proper party plaintiff in that he holds his office as Temporary Controls Administrator without confirmation by the United States Senate, as provided by law.

III.

That the complaint in the above entitled action is defective and does not state a cause of action for damages as purportedly set forth therein in that there is not pleaded that the rentals alleged to have been demanded and received which were higher than the maximum rents permitted by the Rent Regulations for the use and occupancy of the accommodations took place within one year prior to the institution of the action.

The above motion will be made before the above entitled Court on Monday, March 10, 1947, at 10 o'clock a.m., at the courtroom of the above entitled Court in the Post Office Building, Seventh and Mission Streets, San Francisco, or as soon thereafter as counsel can be heard.

Dated: March 4, 1947.

CHARLES A. CHRISTIN

THOMAS J. KEEGAN

Attorneys for Defendant.

Memorandum of Points and Authorities

I.

Section 780, Title 28, U. S. C. A.

Rule 25, Federal Rules of Civil Procedure

Porter v. Goodwin, 68 Fed. Supp. 949

II.

Porter v. Woodward, U. S. District Court for the Southern District of Oregon, Civil No. 3328

Bowles v. A. R. Johnson, Municipal Court of Long Beach, decided February 4, 1947.

III.

Matheny v. Porter, 158 (2d) 478, 10th Circuit (Receipt of Service)

[Endorsed]: Filed March 5, 1947.

[Title of District Court and Cause.]

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 10th day of March, in the year of our Lord one thousand nine hundred and forty-seven.

Present: the Honorable Leon R. Yankwich,
District Judge.

ORDER DENYING MOTION TO DISMISS

This case came on regularly this day for hearing of motion to dismiss. After hearing F. Fuhrman, Esq., on behalf of the plaintiff, there being no appearance on behalf of the defendant, it is Ordered that said motion be and the same hereby denied.

[Title of District Court and Cause.]

OBJECTIONS AND AMENDMENTS TO PRO-
POSED FINDINGS OF FACT AND CON-
CLUSIONS OF LAW

Objections considered and denied. Yankwich, J.

Comes now the defendant and interposes the following objections and suggests the following amendments to the proposed Findings of Fact and Conclusions of Law submitted by the plaintiff.

I.

Finding No. 1 should be deleted as the Court has no jurisdiction under Section 205 (c) and 205 (e) of the Emergency Price Control Act of 1942 as amended, for the reason that the plaintiff Paul A. Porter ceased to be Administrator for the Office of Price Administration and no successor has been legally appointed in his place and stead. Philip B. Fleming sought to be substituted as plaintiff and designated as Administrator of the Office of Temporary Controls has never been properly substituted nor has he qualified nor has he been properly appointed to said office.

The appointment of Philip B. Fleming as Administrator was never confirmed by the United States Senate and there has been no showing made by the plaintiff for the necessity of the substitution pursuant to Rule 25, Federal Rules of Pleadings and Practice. (See also *Porter v. Goodwin* 68 Fed. Sup. 649.)

II.

Finding No. II. There is no evidence to support this finding.

III.

Finding No. IV. There is no evidence to support the finding that "during all of said period the defendant, through his agent and employees, demanded and received from Ruth Kalen the sum of \$75.00 per month . . ." Ruth Kalen testified that she never met the defendant John O'Sullivan and there is no evidence of agency or employment of the person or persons by the defendant O'Sullivan to whom the rent was alleged to have been paid.

IV.

Finding No. V: There is no evidence to support this finding that the defendant did not file the registration statement until March 10, 1945.

V.

Finding No. VI: There is no evidence to support this finding and it should be entirely deleted as the matters therein referred to are not an issue set forth in the complaint and denied in the answer. The complaint does not allege the violation of the order of the Price Administrator dated October 31, 1945. The only violations alleged in the complaint are that the defendant made overcharges. These overcharges, if proven, constitute an entirely different cause of action from the cause of action of gravamen set forth in proposed Finding No. VI.

He could not have been in violation of the order of October 31, 1945, until thirty days thereafter (Porter v. Sandberg, 69 Fed. (2nd) 29 at 31; Porter v. Butts 63 Fed. Supp. 516). The latter referred to case clearly sets up the violation as being the failure and refusal of defendant to make the refund within the time provided and also specifically alleges the mailing of the notice by the Administrator so as to put him on notice in order to charge him for the violation of the order.

The cause of action sought to be set up in this finding is an entirely different cause of action from the one referred to in the complaint. Therefore, the entire finding proposed should be stricken. In this finding there is sought to be found that a copy of the order was mailed to the defendant. There is insufficient evidence for the Court to permit an inference to be drawn or a presumption to arise that this fact exists. The testimony of Mr. Ralph B. Spencer, employee of the Office of Price Administration is that he was Supervising Rent Examiner with thirty girls in the office and the routine was that the copy was mailed to the defendant. The court's attention is called to the fact that the registration shows "1230 Filbert Street, San Francisco, California" to be the address of the owner. There is an apparent change on the registration and the notice itself is alleged to have been mailed to 1235 Filbert Street, San Francisco, California. This is certainly not positive testimony of mailing to the proper address.

Even though this error had not existed the evidence is insufficient to permit this Court to find that the notice which put the defendant in violation was actually mailed. This matter is thoroughly reviewed in *Cook v. Phillips* 162 Atl. 732. The court said:

“We do not think that the mere dictation or writing of a letter coupled with reference to the mailing of letters is sufficient to constitute proof of mailing or corroborating circumstances sufficient to establish the fact that the custom in the particular instance had in fact been followed.”

See also *Commercial Cable Building v. McKenna*, 171 N.Y.S. 409; *Mankin v. Parry*, 70 Pa. Supreme Court.

VI.

Finding No. VII: There is no evidence to support this finding. If Ruth Kalen the alleged tenant testified she never met the defendant O’Sullivan, how can she testify that he demanded and received rent from her for any period of time? The finding further states that the defendant failed and refused to refund to Ruth Kalen the sum of \$150.00 as required by the order reducing the rent. There is no evidence that he ever received the notice referred to.

VII.

Finding No. VIII: There is no evidence to support this finding. The question was never asked as to whether Ruth Kalen had sought a recovery

III.

That the date of first rental of the above mentioned housing accommodations subsequent to March 1, 1942, the date determining the maximum legal rent for housing accommodations in the San Francisco Bay Defense Rental Area, was February 20, 1944.

IV.

That from February 20, 1944, to March, 1945, the above mentioned housing accommodations were occupied by Ruth Kalen and her daughter as tenants, and during all of said period of time the defendant, through his agents and employees, demanded and received from Ruth Kalen the sum of \$75.00 per month for the use and occupancy of said housing accommodations.

V.

That the defendant failed to file a registration statement with the Office of Price Administration for the above mentioned housing accommodations until March 10, 1945.

VI.

That on October 31, 1945, the Rent Director for the Alameda County Defense Rental Area issued an order reducing the maximum legal rent for the above described housing accommodations from \$75.00 per month to \$62.50 per month, and making such reduction effective from the first rental period after September 30, 1943, and directing the defend-

ant to refund to the tenant, within 30 days after the issuance of the order, any rent received by the defendant in excess of the maximum legal rent fixed by this order for a rental period commencing on or after October 1, 1943, and that a copy of said order was mailed to the defendant.

VII.

That the amount of rent demanded and received by the defendant from Ruth Kalen from February 20, 1944, to March, 1945, in excess of the maximum legal rent fixed by the above mentioned order was \$150.00, and that the defendant, within 30 days of the issuance of the order or on November 30, 1945, had failed and refused to refund to Ruth Kalen the said sum of \$150.00, as was required by the order reducing the rent.

VIII.

That Ruth Kalen has not instituted any action against the defendant pursuant to Section 205(e) of the Emergency Price Control Act of 1942, as amended, or otherwise.

CONCLUSIONS OF LAW

I.

This court has jurisdiction of the parties and the subject matter of this action.

II.

That upon the defendant's failure to refund the sum of \$150.00 to Ruth Kalen within 30 days after October 31, 1945, the said sum of \$150.00 became,

on December 1, 1945, an "overcharge" within the provisions of Section 205(e) of the Emergency Price Control Act of 1942, as amended.

III.

Defendant is a violator of the Emergency Price Control Act of 1942, as amended.

IV.

Plaintiff is not entitled to an injunction restraining the defendant from violations of the Rent Regulations for Housing.

V.

Plaintiff is entitled to judgment that defendant be:

A. Required and directed to:

1. Pay to Mrs. Ruth Kalen the sum of One Hundred Fifty (\$150.00) dollars.
2. Pay to the plaintiff for the use of the United States the sum of Three Hundred (\$300.00) dollars.

Dated this 13th day of March, 1947.

LEON R. YANKWICH,
Judge of the United States
District Court.

Approved as to form. Dated

F. E. FUHRMAN,
Attorney for Plaintiff.

(Receipt of Service.)

[Endorsed]: Filed March 13, 1947.

In the District Court of the United States, Northern
District of California, Southern Division

No. 26257-R

PHILIP B. FLEMING, Administrator, Office of
Temporary Controls,

Plaintiff,

vs.

JOHN O'SULLIVAN,

Defendant.

JUDGMENT

The plaintiff, herein, having commenced this action as provided by law, praying for judgment as set forth in the complaint herein, and

It appearing that summons and complaint were duly served upon defendant as shown by the return thereon, and

Defendant having appeared by attorney and filed his answer to the complaint, herein, and this cause having come on for trial before me on the 3rd day of March, 1947, and having heard testimony, herein, on behalf of the plaintiff, and on behalf of the defendant, and plaintiff having duly filed his Findings of Fact and Conclusions of Law,

Now, It Is Hereby Ordered Adjudged and Decreed:

That the defendant pay to Ruth Kalen the sum

of \$150.00 and that the plaintiff have judgment against the defendant on behalf of the United States of America in the sum of \$300.00, together with the cost of this action, and that portion of the complaint praying for an injunction against the defendant for violation of the Rent Regulation for Housing be and is hereby dismissed without cost and without prejudice.

Dated this 13th day of March, 1947.

LEON R. YANKWICH,
United States District Judge.

Approved as to form.

Dated.....

.....,
Attorney for Defendant.

(Receipt of Service.)

[Endorsed]: Filed and entered March 13, 1947.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL AND PETITION
FOR REHEARING AND FOR AMEND-
MENT OF FINDINGS

This is a motion for new trial and petition for rehearing filed on behalf of John O'Sullivan, defendant in the above entitled matter, moving for a new trial and petition for rehearing from the judgment made and entered by the above entitled Court on March 13, 1947, and each and every part

thereof, and is also predicated on the order made and entered by the above entitled Court denying the defendant's motion to dismiss the proceedings.

The grounds for this motion for a new trial and petition for rehearing are as follows:

1. Errors of law occurring in these proceedings and excepted to by the petitioner herein.
2. That the judgment made and entered and hereinabove referred to is void and/or voidable.
3. That the Court in granting said judgment and denying the motion to dismiss acted contrary to law.
4. Insufficiency of evidence to justify and uphold the findings of fact.
5. Insufficiency of evidence to justify the judgment.

The defendant further moves that the findings made by the Court be amended as follows:

(1) That the statute of limitations as applied to the cause of action alleged and as pleaded by defendant to the violations referred to in Paragraph III of the complaint apply, and that the said cause of action so stated is barred by the statute of limitation in that the action was not brought within one year prior to the alleged violations.

(2) That it is not true that the defendant ever received a notice in writing from the Price Administrator dated October 31, 1945.

The motions herein referred to will be predicated on this notice of motion together with all the records, papers and files in this proceeding.

Dated: March 17, 1947.

CHARLES A. CHRISTIN,
THOMAS J. KEEGAN,
Attorneys for Defendant.

Memorandum of Points and Authorities

Matheny v. Porter, 158 F. 2d 478;

Thompson v. Taylor, 62 F. Sup. 930;

Bowles v. Babcock, 65 F. Sup. 380;

Cook v. Phillips, 162 Atl. 732;

Commercial Cable Bldg. v. McKenna, 171
N.Y.S. 409;

Porter v. Sandberg, 69 F. 2d 29;

Federal Rules of Practice and Procedure,
Secs. 25, 52 and 59;

Porter v. Goodwin, 68 F. 2d 649.

(Affidavit of Mailing.)

(Verification of Notary.)

(Seal)

[Endorsed]: Filed March 20, 1947.

[Title of District Court and Cause.]

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 28th day of March, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Leon R. Yankwich,
District Judge.

ORDER DENYING MOTION FOR A NEW
TRIAL, ORDER DENYING MOTION FOR
REHEARING, ORDER DENYING MO-
TION TO AMEND FINDINGS, ORDER
DENYING MOTION TO DISMISS

This case came on regularly this day for hearing on the defendant's motions for a new trial, rehearing, and to amend findings. F. E. Fuhrman, Esq. was present for the plaintiff, and Charles Christin, Esq. was present for the defendant. After hearing Mr. Christin and Mr. Fuhrman, it is Ordered that said motions be denied. Further Ordered that defendant's motion to dismiss, heretofore filed, be denied. At the request of Mr. Christin, it is Ordered that the defendant have a ten-day stay of execution herein.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO
CIRCUIT COURT OF APPEALS

Notice Is Herbey Given that John O'Sullivan, defendant above named hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain judgment entered in this action on March 13, 1947, and from those certain orders made in the above entitled matter denying defendant's motion for a new trial and defendant's motion for dismissal of proceedings, and entered on March 28, 1947.

Dated: April 3, 1947.

CHARLES A. CHRISTIN,
T. J. KEEGAN,
Attorneys for Defendant.

(Affidavit of Service by Mail.)

[Endorsed]: Filed April 5, 1947.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 26257 R

PHILIP B. FLEMING, Administrator, Office of
Temporary Controls,

Plaintiff,

vs.

JOHN O'SULLIVAN,

Defendant.

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby
Ordered that the Defendant and Appellant herein
may have to and including June 24, 1947, to file the
Record on Appeal in the United States Circuit
Court of Appeals in and for the Ninth Circuit.

Dated: May 15, 1947.

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed May 15, 1947.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To the Clerk of the Above Entitled Court:

You Are Hereby Notified that appellant hereby
designates for inclusion in the record on appeal

in the above entitled matter the complete record and all the proceedings and evidence in the action.

Dated: May 20, 1947.

CHARLES A. CHRISTIN,

THOMAS J. KEEGAN,

Attorneys for Defendant and
Appellant.

(Affidavit of Mailing.)

[Endorsed]: Filed May 22, 1947.

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO
TRANSCRIPT OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing twenty-seven pages, numbered from 1 to 27, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Paul A. Porter, Administrator, Office of Price Administration, Plaintiff, vs. John O'Sullivan, Defendant, No. 26257 R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$10.80 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 20th day of June, A.D. 1947.

C. W. CALBREATH,
Clerk.

[Seal] /s/ M. E. VAN BUREN,
Deputy Clerk.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 26,257-R

Before: Hon. Leon R. Yankwich,
Judge.

PHILIP B. FLEMING, Temporary Controls
Administrator,

Plaintiff,

vs.

JOHN O'SULLIVAN,

Defendant.

REPORTER'S TRANSCRIPT

Monday, March 3, 1947

Counsel Appearing:

For Plaintiff F. Fuhrman, Esq.

For Defendant: Charles A. Christin, Esq.

The Clerk: Fleming vs. O'Sullivan.

Mr. Fuhrman: Ready.

Mr. Christin: Ready.

The Court: Proceed to trial.

RALPH G. SPENCER

called for the Plaintiff; sworn.

The Clerk: Will you state your name to the court, please? A. Ralph G. Spencer.

Direct Examination

By Mr. Fuhrman:

Q. Mr. Spencer, where do you reside?

A. In Oakland, California.

Q. What is your address?

A. 6356 Broadway Terrace.

Q. What is your occupation?

A. I am a rent examiner in the Oakland Office of the Office of Temporary Controls, Office of Price Administration.

Q. How long have you been an examiner for that organization?

A. I was employed as junior examiner first; since October, 1942.

Q. October, 1942? A. Yes.

Mr. Fuhrman: Will you mark this paper for identification?

The Clerk: Plaintiff's Exhibit 1 for Identification.

Q. (By Mr. Fuhrman): Mr. Spencer, are you the custodian of the Office of Temporary Controls for registration filed on housing accommodations by landlords in the San Francisco Bay area and Alameda County Defensee Rental Area?

A. That is right, in the Alameda County Defensee Rental Area.

(Testimony of Ralph G. Spencer.)

Q. I will show you Plaintiff's Exhibit 1 for Identification and ask you to tell the court what it is.

Mr. Christin: It speaks for itself.

The Court: He may identify the document.

A. This is the landlord's registration of housing accommodations in Alameda.

Q. (By the Court): Covering the property mentioned? A. Yes.

Mr. Fuhrman: I will offer this in evidence.

Mr. Christin: Objected to that it is immaterial, irrelevant and incompetent, the proper foundation has not been laid, hearsay.

The Court: Objection overruled.

(The registration was marked Plaintiff's Exhibit 1.)

landlord is required to register separately each rental dwelling unit, whether occupied or vacant. A dwelling unit is a room or a group of rooms for which a single rent is paid. Complete a Registration Statement in triplicate. (If not typewritten, be sure the pressure is used so that both carbon copies are clear and distinct.)

OFFICE OF PRICE ADMINISTRATION
REGISTRATION OF RENTAL DWELLINGS
(TYPE OR PRINT PLAINLY-DO NOT FOLD)
(Do Not Use This Form for Hotels and Rooming Houses)

Form No. 06-R079-42
Form DD-U
Rev'd 9-44 Reg's V-250
AREA OFFICE
COPY

Noted on extra sheets, in triplicate, for sections "D" & "E" if necessary.
nt 3-1-42 Effective Date 7-1-42 42

SECTION A. MAILING ADDRESS OF LANDLORD

Name of Landlord John O'Sullivan
Name of Agent
Address Mail to: John O'Sullivan
Address 1236 Filbert St 1235
City and State S.F. 9

IDENTIFICATION
1. 2510 Central Ave, Alameda, Calif
Address of this rental dwelling unit
2. Apt- 102
Apartment number or location
3. Number of Rooms in unit being registered 3
4. Total Number of dwelling units in this structure 18

SECTION B. MAILING ADDRESS OF TENANT

Name of Tenant Mr & Mrs Kalen
Address 2510 Central Ave
City and State Alameda, Calif

MAR 10 1947

SECTION C. MAXIMUM RENT

Read carefully and fill in every item which applies to this dwelling unit.

Rent on "Maximum Rent date" \$ per week () per month ()
Not rented on "Maximum Rent date" but rented at any time during the two-month period ending on "Maximum Rent date."
Date last rented during that two-month period: 194
Rent on that date: \$ per week () per month ()
Not rented on "Maximum Rent date" nor at any time during the two-month period ending on "Maximum Rent date," but rented after "Maximum Rent date."
Check one box if applicable:
☒ (a) Owner occupied or vacant on "Maximum Rent date" and during two-month period ending on "Maximum Rent date."
☐ (b) Newly constructed without priority rating.
☐ (c) Newly constructed with priority rating. (If checked, item 6 must also be filled in)
Date first rented after "Maximum Rent date." Feb 20, 1944
Rent on that date: \$ 75.00 per week () per month (X)
Dwelling unit made available by a change which resulted in an increase or decrease in the number of dwelling units after "Maximum Rent date."
Date first rented after such change: 194
Rent on that date: \$ per week () per month ()
Substantially changed after "Maximum Rent date," but before the "effective date." Check one box if applicable:
☐ (a) From unfurnished to fully furnished.
☐ (b) From fully furnished to unfurnished.
☐ (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR, REPLACEMENT AND MAINTENANCE.
Date first rented after such change: 194
Rent on that date: \$ per week () per month ()
Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.
Rent approved by agency granting priority: \$ per week () per month ()
THE MAXIMUM RENT FOR THIS DWELLING UNIT IS:
\$ 75.00 per week (X) per month (X) 62.50
Enter Maximum Rent in accordance with the following instructions:

(a) If only one of the above items applies to this dwelling unit the Maximum Rent is the rent entered for that item.
(b) If more than one of the above items apply to this dwelling unit the Maximum Rent is the rent reported for the most recent date; except in the case of Item 6.
(c) If item 6 applies to this dwelling unit the Maximum Rent is the lower of the rents entered in Items 1, 3 or 6.
*Note: If any one of the items 3(b), 4 or 5 applies to this dwelling unit you must also fill in the information required in Section "E." The Rent Director may at any time order a decrease in the Maximum Rent determined under Items 3(a), 3(b), 4 or 5, on the grounds that the rent is higher than the rent generally prevailing for comparable housing accommodations on the "Maximum Rent date."
Order issued by Rent Director dated Oct 31, 1945 established maximum rent in amount of \$ 62.50 per week (X) per month (X) La DI 1508-d

Section E - See Note Section C. 7 *

If item 3(b); 4 or 5 of Section C was filled in, set forth in specific detail the type and cost of:

- (a) New construction (c) A change from unfurnished to fully furnished
(b) A change in the number of dwelling units (d) A major capital improvement

SECTION D. EQUIPMENT AND SERVICES.

(Check the equipment and services included in the rent on "Maximum Rent date" or the most recent date you entered in Section C.) (ANSWER "YES" or "NO").

1. EQUIPMENT YES NO
Furniture ☒ ☐
Running Water ☒ ☐
Hot Water ☒ ☐
Flush Toilet ☒ ☐
Bathroom ☒ ☐
Central Heating ☒ ☐
Heating Stove ☒ ☐
Mech. Refrigerator ☒ ☐
Electricity Installed ☒ ☐
Cooking Stove ☒ ☐
If any equipment is shared, explain below:

2. SERVICES YES NO
Garage ☒ ☐
Heat or Heating Fuel ☒ ☐
Cooking Fuel ☒ ☐
Cold Water ☒ ☐
Hot Water ☒ ☐
Light ☒ ☐
Ice or Refrigeration ☒ ☐
Janitor Service ☒ ☐
Garbage Disposal ☒ ☐
Painting & Decorating ☒ ☐
Interior Repairs ☒ ☐
Exterior Repairs ☒ ☐
List any other services:

Are all equipment and services indicated above now included in the rent? Yes (X) No ()
If "No" you must also file Form D-2.

WARNING

The rent for this dwelling unit on and after the "effective date" can be no more than the Maximum Rent entered in Section C, Item 7, unless changed by order of the Rent Director (see Section C, Item 8).

A false statement on this form or an evasion or attempted evasion of the Maximum Rent Regulation may subject you to a \$5,000 fine or imprisonment for one year.

I HEREBY REPRESENT that all statements and entries herein are true and correct.

John O'Sullivan
(Signature of Landlord or his Agent)

(Endorsed): Filed July 18, 1947.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED

JUL 18 1947

PAUL P. O'BRIEN,
CLERK

U. S. DIST. CT. N. D. CAL.

No. 26257R

EX. No. 1
3-3-47

(Testimony of Ralph G. Spencer.)

Q. (By Mr. Fuhrman): Mr. Spencer, whose signature appears as the landlord of the housing accommodations?

Mr. Christin: I object to that on the ground the proper foundation has not been laid, hearsay, and calling for his conclusion.

The Court: I don't think that he can testify to that unless he knows the signature. Of course, he has to go on the legal presumption that a landlord is required to register.

Q. (By Mr. Fuhrman): Does the name of the landlord appear thereon?

Mr. Christin: I don't think he can testify to that. The legal presumption is one thing, but for him to testify——

The Court: I will sustain the objection. I do not think you have to prove that. It is admitted in evidence.

Mr. Fuhrman: The registration indicates that it was filed by John O'Sullivan, and it gives the date first rented after Maximum Rent date as February 20, 1944, and the rent that was being charged on that date was \$75. It shows it was then rented to Mr. and Mrs. Kalen, and it covers apartment 102 at 2510 Central Avenue, Alameda, California. The registration also indicates that it was not filed until March 10, 1945.

Mr. Fuhrman: Will you mark that Plaintiff's Exhibit 2 for Identification?

(Testimony of Ralph G. Spencer.)

The Clerk: Plaintiff's Exhibit 2 for Identification.

Q. (By Mr. Fuhrman): Mr. Spencer, are you the custodian of documents known as Notice of Proceedings by Rent Director issued by the rent director for the San Francisco Bay Defense Rental Area, Oakland, California? A. I am.

Q. I will show you Plaintiff's Exhibit 2 for Identification and ask you to tell the court what it is.

A. This is a notice of the rent director proposing to reduce the rent.

Q. It speaks for itself.

Mr. Fuhrman: I offer this in evidence as Plaintiff's Exhibit 2.

Mr. Christin: Objected to as immaterial, irrelevant, and incompetent, and no foundation laid, not binding on us.

The Court: Let me have it. It does not appear that in due course of business either this or a copy of this was mailed to the addressee; otherwise it would merely be a memorial or testimonial of something that was done in the office. This original evidently never left the files of the Office of Price Administration.

Mr. Fuhrman: Very well, I will elicit that testimony.

Q. Mr. Spencer, would you please describe the method by which your office issued notices of proceedings?

(Testimony of Ralph G. Spencer.)

Mr. Christin: We will object to the form of the question. It does not bind the defendant in this case.

Q. (By Mr. Fuhrman): In the regular course of business prescribed by your office are notices of proceedings sent out to the person whose name appears on the notice of proceedings?

Mr. Christin: I object to the form of the question as leading.

The Court: Objection overruled.

A. They are made up in original and duplicate for mailing to the landlord.

Q. (By Mr. Fuhrman): Where is the resting place of the original, or what becomes of the original document?

A. The original document is held in our files; the duplicate is mailed to the landlord.

Q. Do you have a regular course of business or practice which you follow in such cases?

A. Yes, it is all under control through a card system from one department to the other back to the director or designated officer, and assigned back to the mailing department.

Mr. Fuhrman: I offer this in evidence.

Mr. Christin: The same objection.

The Court: You do not know personally whether that was followed in this particular case?

A. I have no reason to think it was not, it is such a routine matter, it is all kept on record on our control cards that it goes from one department

(Testimony of Ralph G. Spencer.)

to the other to the designated officer, and assigned to the mailing department. It is entirely routine.

The Court: I will overrule the objection. It may be received in evidence.

(Notice of proceeding by rent director marked Plaintiff's Exhibit 2.)

PLAINTIFF'S EXHIBIT No. 2

OPA Form D-18

Notice of Proceedings by Rent Director

Stamp of Issuing Office: San Francisco Bay Defense Rental Area, 2090 Broadway, Oakland 12, California.

Concerning (Description of Accommodations)—
2510 Central Ave., Alameda, Calif. (apt. #102).

Docket No. Ala DI 1508-d

To John O'Sullivan, 1235 Filbert St., San Francisco, Calif.

A preliminary investigation by the Rent Director indicates that the Maximum Rent for the above-described accommodations should be decreased on the grounds stated in Section(s) 5(c)(1)-4(e) of the Rent Regulation. Therefore, the Rent Director proposes to decrease the Maximum Rent from \$75.00 per month to \$62.50 per month, retroactive beginning with the first rental period after Sept. 30, 1943.

In the event you wish to file objections to this

(Testimony of Ralph G. Spencer.)

proposed action, such objections must be filed within 10 days from the date of this notice.

Written Evidence Supporting Your Objections Must Also Be Filed. Your objections and supporting evidence should be typed or legibly written. The Address of the above housing accommodations and the Docket Number appearing on this notice should be placed on each document filed.

If no objections and supporting evidence are filed within the above period, the Rent Director may enter an order decreasing the Maximum Rent without further notice.

The landlord has failed to file a registration statement within the time specified in Section 4(e) of the regulation and this proceeding is commenced within three months after the date of filing of such registration statement. In such cases the regulation provides that the order of the Rent Director under Section 5(c-1) shall be effective to decrease the maximum rent from the date of first renting or October 1, 1943, whichever is the later, unless the Rent Director finds that the landlord was not at fault in failing to file a proper registration statement within the time specified. In the event the landlord wishes to present evidence that he was not at fault such evidence must be presented in writing within ten days from the date of this notice.

Date: June 8, 1945.

HENRY A. CROSS,

Rent Director for the San Francisco Bay Defense
Rental Area.

(Testimony of Ralph G. Spencer.)

Section 5 (c) of the Rent Regulation for Housing provides:

The Rent Director at any time, on his own initiative or on application of the tenant, may order a decrease of the Maximum Rent otherwise allowable, only on the grounds that:

(1) The Maximum Rent for housing accommodations under paragraph (c), (d), (e), or (g) of Section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the Maximum Rent Date.

(2) There has been a substantial deterioration of the housing accommodations other than ordinary wear and tear since the date or order determining its Maximum Rent.

(3) There has been a decrease in the minimum services, furniture, furnishings or equipment required by Section 3 since the date or order determining the Maximum Rent.

(4) The rent on the date determining the Maximum Rent was materially affected by the blood, personal, or other special relationship between the landlord and the tenant and as a result was substantially higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the Maximum Rent Date.

(5) The rent on the date determining the Maximum Rent was established by a lease or other rental agreement which provided for a substantially lower

(Testimony of Ralph G. Spencer.)

rent at other periods during the term of such lease or agreement.

(6) The rent on the date determining the Maximum Rent was substantially higher than at other times of year by reason of seasonal demand, or seasonal variations in the rent, for such housing accommodations. In such cases the Rent Director's order may if he deems it advisable provide for different Maximum Rents for different periods of the calendar year.

(7) There has been a substantial decrease in the number of subtenants or other occupants since an order under paragraph (a) (8) or (c) (8) of this section.

(8) The Maximum Rent is established under Section 4 (i) and is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the Maximum Rent Date, taking into consideration any increased occupancy of such accommodations since that date by subtenants or other persons occupying under a rental agreement with the tenant: Provided, That no decrease shall be ordered below the rent on the Maximum Rent Date.

Section 4 (e) of the Rent Regulation for Hotels and Rooming Houses provides:

For a room with which meals were provided during the 30-day period determining the Maximum Rent without separate charge therefor, the rent

(Testimony of Ralph G. Spencer.)

apportioned by the landlord from the total charge for the room and meals. The landlord's apportionment shall be fair and reasonable and shall be reported in the Registration Statement for such room. The Rent Director at any time on his own initiative or on application of the tenant, may by order, decrease the Maximum Rent established by such apportionment, if he finds that the apportionment was unfair or unreasonable.

Every landlord who provides meals with accommodations shall make separate charges for the two. No landlord shall require the taking of meals as a condition of renting any room unless the room was rented or offered for rent on that basis on June 15, 1942.

Section 5 (c) of the Rent Regulation for Hotels and Rooming Houses provides:

The Rent Director at any time, on his own initiative or on application of the tenant, may order a decrease of the Maximum Rent otherwise allowable, only on the grounds that:

(1) The Maximum Rent for the room is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the Maximum Rent Date.

(2) There has been a substantial deterioration of the room other than ordinary wear and tear since the date or order determining its Maximum Rent.

(3) There has been a decrease in the minimum

(Testimony of Ralph G. Spencer.)

services, furniture, furnishings or equipment required by Section 3 since the date or order determining the Maximum Rent.

(4) The rent on the date determining the Maximum Rent for the room was substantially higher than at other times of year by reason of seasonal demand for such room. In such cases the Rent Director's order may if he deems it advisable provide for different Maximum Rents for different periods of the calendar year.

[Endorsed]: Filed July 18, 1947.

Mr. Fuhrman: This is a noticee of proceedings by rent director, signed by Henry A. Cross, Rent Director. It states that after a preliminary investigation the rent director proposes to decrease the rent on Apartment 102, 2510 Central Avenue, Alameda, California, on the grounds stated in Section 5(c) (1) of the Rent Regulations, and he intends to reduce it from \$75 per month to \$62.50 per month retroactive beginning with the first rental period after September 30, 1943. It states that because the landlord has failed to file a registration statement within the time specified in Section 4(e) of the Regulations, and this proceeding is commenced within three months after the date of filing of such registration statement. In such cases the regulation provides that the order of the Rent Director under Section 5(c) (1) shall be effected to decrease the maximum rent from the

(Testimony of Ralph G. Spencer.)

date of first renting on October 1, 1943, whichever is the later, unless the Rent Director finds that the landlord was not at fault in failing to file a proper registration statement within the time specified. In the event the landlord wishes to present evidence that he was not at fault, such evidence must be presented in writing within ten days from the date of this notice.

Q. Are you the custodian of orders decreasing maximum rent issued by the Alameda County Defense Rental Area? A. That is right.

Mr. Fuhrman: Will you mark this Plaintiff's Exhibit 3 for Identification?

The Clerk: Plaintiff's Exhibit 3 for Identification.

Q. (By Mr. Fuhrman): Mr. Spencer, do you in the course of business in the office at Oakland, California, issue orders decreasing maximum rent?

A. Decreasing maximum rent, yes.

Q. Will you please tell the court what that document is.

A. This is the order that the director in the previous document proposed to issue decreasing the maximum rent from the \$75 to \$62.50, retroactive beginning with the first rental period after September 30, 1943.

Mr. Fuhrman: I ask to introduce this in evidence.

Mr. Christin: Objected to on the ground it is immaterial, irrelevant, and incompetent, the proper

(Testimony of Ralph G. Spencer.)

foundation has not been laid, it is only a piece of paper, it could not bind anybody.

The Court: I think the same showing should be made as was done as to the previous offer. I will withhold a ruling until that is done.

Q. (By Mr. Fuhrman): Mr. Spencer, will you describe the procedure followed by your office in issuing orders for reducing maximum rent?

Mr. Christin: Objected to as not binding on this defendant.

The Court: Overruled.

A. Sometime after the issuance of the first notice a typing of the order in triplicate is done; it goes through the control system to the desk of the director, or the designated officer, and he signs the original, which remains in the file—that is the Government procedure, by the way, on all original documents—and a copy is mailed to the landlord designated in the order and a copy is also mailed to the tenant who is designated in the notice.

Q. (By Mr. Fuhrman): Is that procedure followed in the regular course of business in each case where he issues an order decreasing rent?

Mr. Christin: I offer the same objection.

The Court: Overruled.

A. Yes, it is followed in every case.

Mr. Fuhrman: I offer this in evidence.

Mr. Christin: I object on the ground the proper foundation has not been laid.

The Court: Overruled.

(Testimony of Ralph G. Spencer.)

(Order decreasing maximum rent is marked Plaintiff's Exhibit 3.)

PLAINTIFF'S EXHIBIT No. 3

OPA Form D-38

Order Decreasing Maximum Rent

Stamp of Issuing Office—Alameda County Defense-Rental Area, 319-14th Street, Oakland 12, California.

Concerning (Description of Accommodations)—
Apt. #102, 2510 Central Ave., Alameda.

Docket No.—Ala DI-1508-d.

To: John O'Sullivan, 1235 Filbert St., San Francisco, Calif.

Due notice having been given the landlord of the above-described accommodations, the Rent Director has considered the evidence in this matter and finds that the facts in this case require a reduction of the Maximum Rent on the grounds stated in Section(s) 5(c)(1)-4(e) of the Rent Regulation.

Therefore, on the basis of the rent which the Rent Director finds was generally prevailing in this Defense-Rental Area for comparable housing accommodations on the Maximum Rent Date, it is ordered that the Maximum Rent for the above-described accommodations be, and it hereby is, changed from \$75.00 per mo. to \$62.50 per month,

(Testimony of Ralph G. Spencer.)

retroactive beginning with the first rental period after Sept. 30, 1943.

Issued Oct. 31, 1945. No rent in excess of the Maximum Rent established by this order may be received or demanded. This order will remain in effect until changed by the Office of Price Administration.

The Rent Director finds that the landlord has failed to file a registration statement for the above housing accommodations within 30 days as required by Sections 4(e) and 7 of the Regulation. This order shall, therefore, be effective to decrease the maximum rent from the beginning of the first rental period on or after October 1, 1943. Any rent received by the landlord in excess of the maximum rent fixed by this order for a rental period commencing on or after said date shall be refunded to the tenant, within 30 days from the date of this order.

A. BANDETTINI,

Alameda County Defense
Rental Area.

Copy to: Mr. Kalen, 2510 Central Ave. (apt. #102),
Alameda, Calif.

[Endorsed]: Filed July 18, 1947.

Mr. Fuhrman: This is an order decreasing maximum rent. It is signed by A. Bandettini, Area Rent Director, with the address of the defendant

(Testimony of Ralph G. Spencer.)

O'Sullivan, 1235 Filbert Street, San Francisco, and concerns Apartment 102, 2510 Central Avenue, Alameda. It is Docket No. ALA DI-1508-d. It says, "Due notice having been given the landlord of the above-described accommodations the Rent Director has considered the evidence in this matter and finds that the facts in this case require a reduction in the maximum rent on the grounds stated in Section 5(c)(1) of the Rent Regulation—4(e). Therefore, on the basis of the rent which the Rent Director finds was generally prevailing in the Defense Rental Area for comparable housing accommodations on the maximum rent date, it is ordered that the maximum rent for the above-described accommodations be and it hereby is changed from \$75 a month to \$62.50 a month, retroactive beginning with the first rental period after September 30, 1943. Issued October 31, 1945." The order further states that the Rent Director finds that the landlord has failed to file a registration statement for the above housing accommodations within 30 days, as required by Sections 4(e) and 7 of the Regulation. This order shall, therefore, be effective to decrease the maximum rent from the beginning of the first rental period on or after October 1, 1943. Any rent received by the landlord in excess of the maximum rent fixed by this order for a rental period commencing on or after said date shall be refunded to the tenant within 30 days from the date of this order.

That is all.

(Testimony of Ralph G. Spencer.)

Cross-Examination

By Mr. Christin:

Q. Did you personally mail any of these documents or copies of them to the defendant?

A. No.

Q. How many employees did you have at your office, approximately?

A. At the present time?

Q. At that time.

Mr. Fuhrman: I will object to that question.

The Court: If he knows; it goes to the weight of the testimony.

A. At that time about 30.

Q. (By Mr. Christin): What was your principal duties there?

A. I was supervising rent examiner.

Q. You would interview people coming in with complaints of landlords?

A. Very few interviews.

Q. I will show you the registration and ask you to read staring with "John O'Sullivan."—read what it says.

A. "John O'Sullivan, 1230 Filbert Street." That was later corrected to 1235.

Q. Where is the correction, 1235 on there?

A. I don't know. Mr. O'Sullivan probably put it on there.

Q. But that is the registration, that is the original from which you prepared the notice which you sent?

(Testimony of Ralph G. Spencer.)

A. Yes, 1235 was placed afterward.

Q. Where does it say 1235?

A. Evidently the man added 1235, thinking it was correct.

Q. 1230 is the registration, and 1235 is in the notice of June.

The Court: I notice that. The owner lived in San Francisco?

Mr. Christin: That is not the point. I am looking at the registration.

The Court: Oh, yes.

Mr. Christin: There appears 1230 there and then a "5" is superimposed. They had the wrong address.

The Court: All right, that is a matter of argument.

Mr. Christin: I see that these were signed by different people, one signed by Henry A. Cross, who is in San Francisco?

A. Mr. Cross was the area rent director until about September, 1944, and the Alameda County Defense Rental Area became separated from the San Francisco District, and the notice was sent by Mr. Bandettini.

Q. Did Mr. Henry Cross sign that, himself?

A. No.

Q. Who signed that? A. I signed it.

Q. You signed his name? A. Yes.

Q. All you know is you have got in your files three original documents in evidence here; that is all you know of your own knowledge?

A. Yes.

(Testimony of Ralph G. Spencer.)

Q. You don't know of your own knowledge whether they were sent out, or not?

A. I did not mail them.

Mr. Christin: That is all.

RUTH KALEN

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name to the court?

A. Mrs. Ruth Kalen.

Direct Examination

By Mr. Fuhrman:

Q. Where do you reside?

A. 2510 Central Avenue, Alameda.

Q. Which apartment are you now living in?

A. Apartment 101.

Q. Where did you live prior to the time you lived in apartment 101 at 2510 Central Avenue?

A. Apartment 102.

Q. At what address?

A. 2510 Central Avenue.

Q. At what time did you move into apartment 102, 2510 Central Avenue, Alameda?

A. February 20, 1944.

Q. How long did you occupy Apartment 102 at 2510 Central Avenue?

A. Until the 10th of October, 1945.

Q. During the time that you lived in Apartment 102 at 2510 Central Avenue, Alameda, who resided in the apartment with you?

A. My daughter, who at the present time is Mrs.

(Testimony of Ruth Kalen.)

Karemtis; she was married on the 21st of September, or August, I have forgotten, 1945—in September, I think it was.

Q. What rent did you pay for apartment 102, 2510 Central Avenue, Alameda? A. \$75.

Q. A month? A. A month.

Q. Who was your landlord while you were residing at 2510 Central Avenue?

Mr. Christin: That is a conclusion, hearsay.

Mr. Fuhrman: I don't think it is.

The Court: I will sustain the objection.

Q. (By Mr. Fuhrman): To whom did you pay your rent?

A. I paid my rent to a manager named Brinkerhoff, I believe it was, up until a certain time, and then that manager left, and Mr. Allenger took over—I don't remember just the date when that change was made.

Q. Have you ever received a refund from Mr. O'Sullivan from any rent he collected while you were a tenant there?

A. No, I have not, not at all.

Q. (By the Court): In what form did you pay your rent?

A. Well, most of the time—sometimes by check.

Q. When you paid by check whom did you make it payable to? A. To the manager.

Q. Was it Mr. O'Sullivan?

A. No, I didn't know Mr. O'Sullivan.

Q. How large a building was it?

(Testimony of Ruth Kalen.)

A. There are 18 units in the apartment house.

Q. Is it spread out? A. It is three stories.

Q. All occupied by apartments—was the entire building devoted to apartments? A. Yes.

Q. Regular apartments? A. Yes.

The Court: That is all.

Mr. Fuhrman: That is all.

Mr. Christin: No questions.

Mr. Fuhrman: Plaintiff rests.

CERTIFICATE OF REPORTER

I, Edward W. Lehner, Official Reporter, certify that the foregoing 15 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

[Endorsed]: No. 11691. United States Circuit Court of Appeals for the Ninth Circuit. John O'Sullivan, Appellant, vs. Philip B. Fleming, Administrator, Office of Temporary Controls, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 18, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11691

JOHN O'SULLIVAN,

Appellant,

vs.

PHILIP B. FLEMING, Administrator, Office of
Temporary Controls,

Respondent.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY, AND
DESIGNATION OF RECORD ON APPEAL

I.

The appellant hereby adopts the Designation of Contents of Record on Appeal heretofore filed in the District Court of the United States, Northern District of California, Southern Division.

II.

The statement of points on appeal is as follows:

(a) The complaint fails to state a cause of action, as there is no allegation that the alleged violation occurred within one year immediately prior to the filing of the complaint.

(b) That no showing has been made under Rule 25 of the Federal Rules of Civil Procedure justify-

ing continuance of these proceedings in the name of the present plaintiff.

(c) That the present plaintiff cannot maintain the present proceeding.

Dated July 31, 1947.

/s/ CHARLES A. CHRISTIN,

/s/ THOMAS J. KEEGAN,

Attorneys for Appellant.

Receipt of a copy of the within Statement of Points upon which Appellant Intends to Rely, and Designation of Record on Appeal is hereby acknowledged this 31st day of July, 1947.

/s/ F. E. FUHRMAN,

Attorney for Respondent.

[Endorsed]: Filed July 31, 1947.

